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Iowa Department of Public Safety



Administrative Rules Improvement Plan

***Submitted Pursuant to
Executive Order # 8***

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I. *Background and Purpose of the Plan*

Executive Order # 8, issued by Governor Thomas J. Vilsack on September 14, 1999 requires agencies of the Executive Branch of the State of Iowa to develop a process to improve their administrative rules. One specific requirement of Executive Order # 8 is the development of a plan to accomplish a thorough, formal review of all administrative rules of the agency, with certain narrow exceptions. This document presents the plan which carries out this requirement.

The purpose of this plan is, generally, to improve the development, organization, and content of the administrative rules of the Iowa Department of Public Safety. The primary mechanism to accomplish this objective will be an orderly, systematic, formal review of existing administrative rules of the Department. A specific methodology and time frame for this review process to be completed is presented.

II. **Overview of the DPS Administrative Rules Improvement Process**

To facilitate the completion of the formal review process in a timely manner, formal reviews will deal with groupings of rules. In many cases, the “grouping” will be a chapter of the rules, although in some cases, the “grouping” may be a portion of a chapter. This plan specifies the groupings of rules to be considered simultaneously.

Participation by stakeholders in the process of formal reviews of administrative rules is required by Executive Order # 8. The method to facilitate such participation is modeled on the provisions of the Iowa Administrative Procedure Act for public notice and participation in the administrative rulemaking process. Consequently, the review of each group of rules will commence with a Public Notice published in the *Iowa Administrative Bulletin*, containing an announcement that the Department is undertaking a formal review of rules identified in the notice, announcing that any interested person is invited to comment on the rules under review, providing information about how to comment by telephone, by mail, by electronic mail, in person, or at a public hearing, the time and place of which will be included in the notice. In addition, each public notice will be published on the World Wide Web site of the Iowa Department of Public Safety. Included in the Web site publication in each case will be a link facilitating the submission of comments regarding the grouping of rules to the Department

by electronic mail and a link to the text of the current rules. Publication of each Public Notice in the *Iowa Administrative Bulletin* will be followed by a period of not less than 35 days set aside to receive public comment. In most cases the period following the publication of the public notice for public comment to be received will be at least 45 days. The period for public comment will be followed in each case by a public hearing at which any interested party may comment on the existing rules and may make recommendations to retain, rescind, or modify the rules in the grouping under consideration. In addition, identified stakeholders will be asked directly to comment and provide any information in their possession which might be relevant to the formal review of the particular grouping of rules. “Identified stakeholders” will include any organizations or individuals who have registered their desire to be considered as such with regard to the specific rules under consideration or with regard to all administrative rules of the Department. The Department may identify any additional organization as a stakeholder and seek comment from that organization prior to completion of the formal review of a grouping of rules. After the public hearing, the Department will undertake an internal, formal review of the grouping of rules under consideration. The period of time allowed for this review varies according to the complexity of and past degree of controversy of each grouping of rules considered. For most groupings of rules, the time allowed for the Department’s review is sixty days. In a few instances where the identified grouping involves relatively simple rules which are thought not be controversial, the time allotted for review is thirty days. In those cases where the rules grouping includes particularly complex or controversial rules, the time for review is ninety days.

The formal review undertaken by the Department of each grouping of rules will consider any comments received during the comment period or the public hearing, any documented comment on or criticism of any of the rules under consideration prior to the comment period, including requests for waivers of rules, and any other commentary on or analysis of the rules under consideration available to the Department. The Department may undertake additional analysis or collect additional information regarding a rule or grouping of rules and its impact if needed. The formal review will address the following criteria for evaluating the rules in the grouping under consideration:

- Need for the rules in the grouping under consideration.
- Clarity of the rules in the grouping under consideration.
- Consistency of the rules in the grouping under consideration with statutory authority of the Department and legislative intent of the statute(s) which they implement.
- Costs and benefits of the rules in the grouping under consideration.

- Fairness of the rules in the grouping under consideration.
- Consistency of the rules in the grouping under consideration with current standards, practices and conventions in use for administrative rulemaking in Iowa.

The first five of these criteria are specified in Executive Order # 8. The final criteria are included to address problems known to occur in some rules that were adopted in the past. The content and intent of these rules may or may not be adequate; this would be determined through analysis of the criteria specified in the Executive Order. The final additional criterion included here addresses the form of some rules. Two examples of such problems are (1) lack of specificity in the text of some rules with regard to the effective date of the rule, when that remains a matter of concern in the current application of the rule, and (2) lack of adequate specificity in the adoption by reference of standards or requirements enacted by an outside body, such as a federal agency or a national organization which establishes uniform standards. Adoptions by reference of the enactments of outside bodies are limited to a specific text in force at a given time and not to any later amendments of the text that might be adopted by the outside body. The extent of such problems in administrative rules of the Iowa Department of Public Safety is not known precisely; it is, however, known that they occur to some degree.

In addition, each review of a grouping of rules will include an examination of any existing policy or interpretive statements or similar documents relevant to the subject matter of the rules under consideration to consider whether or not any of the material contained in these documents should be adopted as rules. Each administrative unit of the Department (divisions of the Department and bureaus within the Office of the Commissioner shall prior to January 1, 2001, identify any existing policy or interpretive statements in any areas not currently covered by existing rules and shall provide copies of these documents to the Agency Rules Administrator with written recommendations as to whether or not the material should be incorporated in future rulemaking. The Agency Rules Administrator will provide prior to July 1, 2001, a summary of this information to the Commissioner and the Department's legal counsel (Assistant Attorney General) and will prepare a report summarizing this information and intended actions of the Department to the Administrative Rules Coordinator prior to November 1, 2001.

At the completion of the formal review of each grouping of rules, the Department will issue a preliminary report of its findings regarding the rules under consideration. These reports will be published on the Department's Web site and each identified stakeholder will be notified of the publication of the preliminary report and of the opportunity to comment on the preliminary report prior to issuance of a final report on the grouping of rules. A period of at least thirty days for receiving comments on each preliminary report will be provided before publication of the final report on each grouping of rules.

Following the issuance of the final report on a grouping of rules, the Department will undertake any rulemaking called for in the report. Time frames for such rulemaking remain uncertain and would depend upon the extent of the contemplated changes, any related statutory changes, and any other anticipated rulemaking on related subjects.

The Department requests that one chapter of its administrative rules be exempted from the requirements of Executive Order # 8 and this process. Chapter 1, "The Department" is purely information in nature, rather than regulatory. Therefore, permission is requested to omit it from the regulatory review process presented in this plan.

III. *Administrative Rules Improvement Plan Timeline*

Administrative Rules Improvement Plan
Iowa Department of Public Safety

Rules Included	Responsibility	Timeline				
		Public Notice	Public Hearing	Agency Review	Preliminary Assessment	Final Assessment
CHAPTER 1; THE DEPARTMENT		Informational; Not regulatory				
CHAPTER 2; BAIL ENFORCEMENT, PRIVATE INVESTIGATION AND PRIVATE SECURITY BUSINESSES	Field Services Bureau, Administrative Services Division	September, 2000	October, 2000	60 days	January, 2001	February, 2001
CHAPTER 3; SHERIFF'S UNIFORMS	Commissioner	September, 2000	October, 2000	30 days	December, 2000	January, 2001
CHAPTER 4; WEAPONS						
DIVISION I; WEAPONS PERMITS; 661-4.1 to 4.50	Field Services Bureau, Administrative Services Division	March, 2001	April, 2001	90 days	August, 2001	September, 2001
DIVISION II; DISPOSITION OF SEIZED AND FORFEITED WEAPONS AND AMMUNITION; 661-4.51 to 661-4.99	Criminalistics Laboratory, Division of Criminal Investigation	October, 2000	November, 2000	60 days	February, 2001	March, 2001
CHAPTER 5; FIRE MARSHAL	Fire Marshal Division					
General provisions; Means of Exit; Life Safety for Existing Buildings; Residential Occupancies; 661-5.1 to 5.249; 661-5.800 to 5.849		November, 2000	December, 2000	60 days	March, 2001	April, 2001
Flammable Liquids and Gases; 661-5.250 to 5.499		February, 2001	March, 2001	60 days	June, 2001	July, 2001
Health Care Facilities; 661-5.550 to 5.649		March, 2001	April, 2001	90 days	August, 2001	September, 2001
Schools, Colleges, and Child Care Facilities; 661-5.500 to 5.549; 661-650 to 5.799		August, 2000	September, 2000	90 days	January, 2001	February, 2001
Explosive Materials; 661-5.850 to 5.899		July, 2000	August, 2000	60 days	November, 2000	December, 2000

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Rules Included	Responsibility	Timeline				
		Public Notice	Public Hearing	Agency Review	Preliminary Assessment	Final Assessment
CHAPTER 6; VEHICLE IMPOUNDMENT	Assistant Attorney General ; Iowa State Patrol	August, 2000	September, 2000	60 days	December, 2000	January, 2001
CHAPTER 7; DEVICES AND METHODS TO TEST BODY FLUIDS FOR ALCOHOL OR DRUG CONTENT	Criminalistics Laboratory, Division of Criminal Investigation	December, 2000	January, 2001	60 days	April, 2001	May, 2001
CHAPTER 8; CRIMINAL JUSTICE INFORMATION DIVISION I; IOWA ON-LINE WARRANTS AND ARTICLES SYSTEM; 661-8.101 to 8.200						
DIVISION II; CRIMINAL INTELLIGENCE INFORMATION; 661-8.201 to 8.300	Field Services Bureau, Administrative Services Division	September, 2000	October, 2000	60 days	January, 2001	February, 2001
DIVISION III; IOWA SEX OFFENDER REGISTRY; 661-8.301 to 8.399	Intelligence Bureau	November, 2000	December, 2000	90 days	April, 2001	May, 2001
CHAPTER 9; COMPLAINT AGAINST AN EMPLOYEE	Division of Criminal Investigation	February, 2001	March, 2001	90 days	July, 2001	August, 2001
CHAPTER 10; PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF PUBLIC SAFETY	Professional Responsibility Bureau	July, 2000	August, 2000	30 days	October, 2000	November, 2000
CHAPTER 11; IDENTIFICATION SECTION OF THE DIVISION OF CRIMINAL INVESTIGATION	Assistant Attorney General ; Agency Rules Administrator	November, 2000	December, 2000	60 days	March, 2001	April, 2001
CHAPTER 12; CRIMINALISTICS LABORATORY	Division of Criminal Investigation	April, 2001	May, 2001	90 days	September, 2001	October, 2001
CHAPTER 13; SPECIAL RAILWAY AGENTS	Criminalistics Laboratory, Division of Criminal Investigation	August, 2000	September, 2000	60 days	December, 2000	January, 2001
	Field Services Bureau, Administrative Services Division	July, 2000	August, 2000	30 days	October, 2000	November, 2000

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Rules Included	Responsibility	Timeline				
		Public Notice	Public Hearing	Agency Review	Preliminary Assessment	Final Assessment
CHAPTER 14; PAYMENT OF SMALL CLAIMS	Finance Bureau, Administrative Services Division	November, 2000	December, 2000	30 days	February, 2001	March, 2001
CHAPTER 15; LAW ENFORCEMENT ADMINISTRATOR'S TELECOMMUNICATIONS ADVISORY COMMITTEE (LEATAC)	Iowa State Patrol Communications	December, 2000	January, 2001	30 days	March, 2001	April, 2001
CHAPTER 16; STATE OF IOWA BUILDING CODE	Building Code Bureau, Fire Marshal Division	May, 2001	June, 2001	60 days	September, 2001	October, 2001
General Provisions, including Division I; Division V, One and Two Family Dwellings						
Division II, Electrical Rules; Division III, Mechanical Rules; Division IV, Plumbing Rules		May, 2001	June, 2001	60 days	September, 2001	October, 2001
Division VI, Factory Built Structures		January, 2001	February, 2001	90 days	June, 2001	July, 2001
Division VIII, Thermal and Lighting Efficiency		January, 2001	February, 2001	90 days	June, 2001	July, 2001
CHAPTER 16 and CHAPTER 18; Chapter 16, Division VII, Accessibility Chapter 18, Handicapped Parking	Fire Marshal Division	March, 2001	April, 2001	90 days	August, 2001	September, 2001
CHAPTER 19; MISSING PERSON INFORMATION CLEARINGHOUSE	Missing Persons Information Clearinghouse, Division of Criminal Investigation	January, 2001	February, 2001	60 days	May, 2001	June, 2001
CHAPTER 20; GOVERNOR'S TRAFFIC SAFETY BUREAU	Governor's Traffic Safety Bureau	December, 2000	January, 2001	60 days	April, 2001	May, 2001
CHAPTER 23; CLOSED CIRCUIT VIDEOTAPE SURVEILLANCE SYSTEMS ON EXCURSION GAMBLING BOATS	Gaming Enforcement Bureau, Division of Criminal Investigation	May, 2001	June, 2001	60 days	September, 2001	October, 2001
CHAPTER 25; PUBLIC RECORDS AND FAIR INFORMATION PRACTICES	Administrative Services Division	April, 2001	May, 2001	90 days	September, 2001	October, 2001
CHAPTER 28; MARIJUANA ERADICATION PROCEDURES	Division of Narcotics Enforcement	March, 2001	April, 2001	60 days	July, 2001	August, 2001

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IV. Follow-Up: Improving the DPS Rulemaking Process

In addition to the completion of the formal review of the Department's existing administrative rules laid out in the preceding sections, several additional initiatives will be undertaken to ensure that the Department's rulemaking process and the resulting form and content of its rules maintains the improvements gained through the formal review process and continues to build upon them in the future.

- By November 1, 2000, the Department will complete and submit to the Administrative Rules Coordinator an inventory of mentions of the Department, any of its administrative units, or its rules in the Code of Iowa and the Iowa Administrative Code. This activity complies with a provision of Executive Order # 8.
- Following the completion of the activities laid out in the prior section the Agency Rules Administrator and other representatives of the Department will meet with the Administrative Rules Coordinator in a Governor's Office Conference, as provided in Executive Order # 8, to review the recommendations contained in final assessments from the formal review process. This conference will be held no later than March 1, 2002.
- When the Administrative Rules Coordinator has notified the Department of the disposition of all recommendations contained in the assessments submitted from the formal review process and discussed at the Governor's Office Conference, the department will submit a proposed schedule of work for implementing the proposed rulemaking activities contained in any approved recommendations. The proposed schedule will be submitted to the Administrative Rules Coordinator no later than May 1, 2002.
- The Department will submit a final report summarizing all activities undertaken pursuant to Executive Order # 8, including the status of all rulemaking activity pursuant to recommendation from the formal review process no later than December 31, 2002. Included in the final report will be a projected schedule for future ongoing review of agency rules.
- By August 1, 2001, and by that date in each succeeding year, the Department will submit an annual regulatory plan summarizing anticipated rulemaking activity for the coming year to the Administrative Rules Coordinator as required by Executive Order # 9.

- By July 1, 2001, the Department will create and make accessible to the public through publication its World Wide Web site a current rulemaking docket that summarizes the content and status of any ongoing rulemaking activities of the Department. This docket will be updated whenever needed to maintain the currency of the information it contains, and printed copies of the current docket will be available from the Department upon request. This activity complies with Executive Order # 9.
- The Department will cooperate with the Quality in Rulemaking Committee established in Executive Order # 10. The Agency Rules Administrator will advise the Commissioner regarding training related to rulemaking needed by Department personnel and provide the Department's recommendations regarding the content and recipients of such training to the Administrative Rules Coordinator and the Quality in Rulemaking Committee.

V. Resource Requirements and Potential Barriers to Implementation

Key staff who are expected to be directly involved in the rules review process for each identified grouping of rules are listed in the next table. Additional staff, not yet identified, may be involved in the review process as needed. Generally, it is not feasible at this juncture to reliably predict the time commitments of key staff to the project with any precision. Time commitments will vary according to the complexity and especially the degree of controversy for each grouping of rules found through the process of public participation and comment received during the rules review process. However, it is anticipated that at least one third of the time of the Agency Rules Administrator (Executive Officer II) will be involved throughout the process and this may expand to one half time or more at certain times in the process. In addition, the key staff person identified for each grouping of rules is expected to be involved in the process a minimum of one quarter time during the months identified for agency review of the rule grouping after public comment has been gathered.

For all divisions and bureaus identified in this plan as responsible for particular rules groupings, the review process may require some rearrangement of priorities. A likely solution, when available may be to defer *discretionary* rulemaking activities. However, when rulemaking is required to comply with state or federal law or to implement changes in state statutes, this activity may temporarily take precedence over activities scheduled in this plan.

Three units of the Department stand out as having particularly significant responsibilities under this plan: the Division of Criminal Investigation, the Administrative Services Division, and the Fire Marshal Division. Substantial time commitments will be required of key staff for the activities outlined in this plan for each of these units. While these time demands may be expected to have substantial impact upon the Division of Criminal Investigation and the Administrative Services Division, the effect on the Fire Marshal Division will be particularly notable. This relatively small division has responsibility for three chapters of the administrative rules of the Iowa Department of Public Safety. However, two of these chapters (5, “State Fire Marshal” and 16, “State of Iowa Building Code”) are by far the most complex, technical, and lengthy of the chapters of the Department’s administrative rules. None of the three bureaus of this division are able to provide significant resources to this effort, given their current staffing levels and statutory responsibilities. Consequently, the division director will be personally engaged in the rules review effort, and will be unable to rely on other division staff for substantial assistance.

Other than staff time, the primary cost associated with this project is likely to be printing. While a precise estimate of the likely cost of printing materials associated with implementation of this plan is not attainable, it is likely that the cost of printing will be between \$1500.00 and \$2500.00. Also, while the plan does not anticipate any such sessions, if interest in a particular rules groupings were to warrant it, there may be required travel to hold public hearings at locations outside of the Des Moines area, or, alternatively, funds may be required to offer video access to one or more hearings via the Iowa Communications Network.

The table that begins on the next page shows the projected assignment of key staff to the project for each grouping of rules.

Rules Included	Responsibility	Staff
CHAPTER 1; THE DEPARTMENT	Informational, not regulatory	
CHAPTER 2; BAIL ENFORCEMENT, PRIVATE INVESTIGATION AND PRIVATE SECURITY BUSINESSES	Field Services Bureau, Administrative Services Division	Sam Knowles Chief Field Services Bureau
CHAPTER 3; SHERIFF'S UNIFORMS	Commissioner	Captain Donna Bacus Executive Assistant to the Commissioner
CHAPTER 4; WEAPONS		
DIVISION I; WEAPONS PERMITS; 661-4.1 to 4.50	Field Services Bureau, Administrative Services Division	Sam Knowles Chief, Field Services Bureau
DIVISION II; DISPOSITION OF SEIZED AND FORFEITED WEAPONS AND AMMUNITION; 661-4.51 to 661-4.99	Criminalistics Laboratory, Division of Criminal Investigation	Michael Rehberg Administrator Criminalistics Laboratory
CHAPTER 5; FIRE MARSHAL	Fire Marshal Division	
General provisions; Means of Exit; Life Safety for Existing Buildings; Residential Occupancies; 661-5.1 to 5.249; 661-5.800 to 5.849		Roy Marshal State Fire Marshal
Flammable Liquids and Gases; 661-5.250 to 5.499		Roy Marshal State Fire Marshal
Health Care Facilities; 661-5.550 to 5.649		Roy Marshal State Fire Marshal
Schools, Colleges, and Child Care Facilities; 661-5.500 to 5.549; 661-650 to 5.799		Roy Marshal State Fire Marshal
Explosive Materials; 661-5.850 to 5.899		Roy Marshal State Fire Marshal

Rules Included	Responsibility	Staff
CHAPTER 6; VEHICLE IMPOUNDMENT	Assistant Attorney General ; Iowa State Patrol	Jeff Farrell Assistant Attorney General Major Dennis Merritt Field Operations Officer
CHAPTER 7; DEVICES AND METHODS TO TEST BODY FLUIDS FOR ALCOHOL OR DRUG CONTENT	Criminalistics Laboratory, Division of Criminal Investigation	Michael Rehberg Administrator Criminalistics Laboratory
CHAPTER 8; CRIMINAL JUSTICE INFORMATION		
DIVISION I; IOWA ON-LINE WARRANTS AND ARTICLES SYSTEM; 661-8.101 to 8.200	Field Services Bureau, Administrative Services Division	Sam Knowles Chief, Field Services Bureau
DIVISION II; CRIMINAL INTELLIGENCE INFORMATION; 661-8.201 to 8.300	Intelligence Bureau	Russell Porter Special Agent in Charge Intelligence Bureau
DIVISION III; IOWA SEX OFFENDER REGISTRY; 661-8.301 to 8.399	Division of Criminal Investigation	Larry Mullen Special Agent in Charge Criminal Assessment Unit
CHAPTER 9; COMPLAINT AGAINST AN EMPLOYEE	Professional Responsibility Bureau	Larry Sauer Special Agent in Charge Professional Responsibility Bureau

<i>Rules Included</i>	<i>Responsibility</i>	<i>Staff</i>
CHAPTER 10: PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF PUBLIC SAFETY	Assistant Attorney General ; Agency Rules Administrator	Michael Coveyou Agency Rules Administrator Jeff Farrell Assistant Attorney General
CHAPTER 11; IDENTIFICATION SECTION OF THE DIVISION OF CRIMINAL INVESTIGATION	Division of Criminal Investigation	Timothy McDonald Assistant Director, DCI
CHAPTER 12; CRIMINALISTICS LABORATORY	Criminalistics Laboratory, Division of Criminal Investigation	Michael Rehberg Criminalistics Laboratory Administrator
CHAPTER 13; SPECIAL RAILWAY AGENTS	Field Services Bureau, Administrative Services Division	Sam Knowles Chief, Field Services Bureau
CHAPTER 14; PAYMENT OF SMALL CLAIMS	Finance Bureau, Administrative Services Division	Dave Heuton Chief, Finance Bureau
CHAPTER 15; LAW ENFORCEMENT ADMINISTRATOR'S TELECOMMUNICATIONS ADVISORY COMMITTEE (LEATAC)	Iowa State Patrol Communications	Major Larry Noble Special Services Officer

Rules Included	Responsibility	Staff
CHAPTER 16; STATE OF IOWA BUILDING CODE General Provisions, including Division I; Division V, One and Two Family Dwellings	Building Code Bureau, Fire Marshal Division	
Division II, Electrical Rules; Division III, Mechanical Rules; Division IV, Plumbing Rules		Roy Marshall Building Code Commissioner
Division VI, Factory Built Structures		Roy Marshall Building Code Commissioner
Division VIII, Thermal and Lighting Efficiency		Roy Marshall Building Code Commissioner
CHAPTER 16 and CHAPTER 18; Chapter 16, Division VII, Accessibility Chapter 18, Handicapped Parking	Fire Marshal Division	Roy Marshall Building Code Commissioner
CHAPTER 19; MISSING PERSON INFORMATION CLEARINGHOUSE	Missing Persons Information Clearinghouse, Division of Criminal Investigation	Larry Mullen Special Agent in Charge Criminal Assessment Unit
CHAPTER 20; GOVERNOR'S TRAFFIC SAFETY BUREAU	Governor's Traffic Safety Bureau	J. Michel Laski Director Governor's Traffic Safety Bureau
CHAPTER 23; CLOSED CIRCUIT VIDEOTAPE SURVEILLANCE SYSTEMS ON EXCURSION GAMBLING BOATS	Gaming Enforcement Bureau, Division of Criminal Investigation	Eugene Meyer Assistant Director, DCI
CHAPTER 25; PUBLIC RECORDS AND FAIR INFORMATION PRACTICES	Administrative Services Division	Carroll L. Bidler Director Administrative Services Division
CHAPTER 28; MARIJUANA ERADICATION PROCEDURES	Division of Narcotics Enforcement	Sean McCullough Special Agent in Charge